

STATEMENT

OF

THE HONORABLE JOHN GAUGHAN
MARITIME ADMINISTRATOR

OF THE

DEPARTMENT OF TRANSPORTATION

BEFORE THE

OVERSIGHT HEARING OF THE SUBCOMMITTEE
ON MERCHANT MARINE
OF THE HOUSE MERCHANT MARINE
AND FISHERIES COMMITTEE

WITH RESPECT TO THE IMPACT OF FOREIGN
TRADE PRACTICES ON U.S. MARITIME
INDUSTRIES AND LABOR

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MR. CHAIRMAN, AND MEMBERS OF THE SUBCOMMITTEE ON MERCHANT MARINE. MY NAME IS JOHN GAUGHAN, AND I AM THE MARITIME ADMINISTRATOR OF THE DEPARTMENT OF TRANSPORTATION. I AM PLEASED TO APPEAR THIS MORNING TO PRESENT THE VIEWS OF THE ADMINISTRATION ON THE IMPACT OF FOREIGN TRADE PRACTICES ON U.S. MARITIME INDUSTRIES AND LABOR. MORE SPECIFICALLY, I HAVE BEEN REQUESTED TO TESTIFY ON RESTRICTIVE PRACTICES OF FOREIGN COUNTRIES AFFECTING U.S.-FLAG LINER OPERATORS AND PROTECTIONISM IN WORLD SHIPBUILDING.

THESE HEARINGS ARE MOST TIMELY, AS OUR CARRIERS CONTINUE TO CONFRONT NUMEROUS RESTRICTIONS ON THEIR OPERATIONS ABROAD, WHILE THEIR FOREIGN COMPETITORS ENJOY OPEN MARKET CONDITIONS IN THE UNITED STATES. THIS IS THE SHIPPING VERSION OF THE TRADE ISSUE ABOUT WHICH WE HAVE ALL HEARD SO MUCH. WE ALL HEAR THE TERMS "FREE TRADE", "FAIR TRADE", "MANAGED TRADE", AND THE LIKE TOSSED ABOUT. TAKEN OUT OF CONTEXT, HOWEVER, THEIR MEANING IS USUALLY FAR FROM CLEAR.

AS PRESIDENT REAGAN HAS REPEATEDLY NOTED, "IF TRADE IS NOT FAIR FOR ALL, THEN TRADE (CAN BE) FREE IN NAME ONLY." AS ITS PRINCIPAL STRATEGY FOR ACHIEVING THIS BASIC FAIRNESS IN INTERNATIONAL TRADE, THE ADMINISTRATION HAS SOUGHT TO OPEN FOREIGN MARKETS RATHER THAN CLOSE U.S. MARKETS. THE MARITIME POLICY OF THE UNITED STATES IS TO PRESERVE AND PROMOTE COMPETITION IN OCEAN SHIPPING, AND TO SEEK THE ELIMINATION OF RESTRICTIVE PRACTICES OF FOREIGN COUNTRIES AFFECTING U.S.-FLAG CARRIERS.

AS YOU KNOW, U.S.-FLAG OPERATORS IN INTERNATIONAL TRADE FACE A NUMBER OF RESTRICTIVE PRACTICES WITH RESPECT TO ACCESS TO CARGO. THE MOST NOTABLE IS THE U.N. LINER CODE, AND OUR OPPOSITION TO THE CODE IS WELL DOCUMENTED. BUT, RESTRICTIVE PRACTICES ON U.S.-FLAG LINER OPERATIONS GO BEYOND CARGO RESERVATION AGREEMENTS SUCH AS THE CODE. THIS MORNING I WOULD LIKE TO FOCUS ON RESTRICTIVE PRACTICES THAT TAKE THE FORM OF RULES, REGULATIONS AND ADMINISTRATIVE PRACTICES ADOPTED BY FOREIGN COUNTRIES THAT ADVERSELY AFFECT THE ABILITY OF U.S.-FLAG LINER OPERATORS TO COMPETE IN THE FOREIGN TRADES, AND OUR EFFORTS TO ELIMINATE THESE PRACTICES. IT WAS FOR THIS PURPOSE THAT THE DEPUTY SECRETARY, JIM BURNLEY, AND I TRAVELED TO THE FAR EAST LAST FALL FOR MEETINGS WITH A NUMBER OF FOREIGN GOVERNMENTS.

THESE PRACTICES OF CERTAIN FOREIGN COUNTRIES TAKE VARYING FORMS, INCLUDING, AMONG OTHERS, RESTRICTIONS ON SHIPS' AGENTS, TRUCKING SERVICE, CONTAINER TERMINAL

OPERATIONS, CONTAINER SIZE, AND SIMILAR RESTRAINTS ON THE UNFETTERED OPERATION OF U.S.-FLAG LINER VESSELS. THESE RESTRICTIONS ARE NOT TO BE MINIMIZED, AS INTERNATIONAL INTERMODAL TRANSPORTATION IS A HOTLY COMPETITIVE BUSINESS. WHAT PROFIT IS THERE IF WE HAVE THE BEST OCEAN TRANSPORTATION IN THE WORLD, AND OUR LINER OPERATORS ARE HINDERED BY SUCH RESTRICTIONS IN FOREIGN COUNTRIES.

LET ME GIVE THREE EXAMPLES OF THE TYPES OF RESTRICTIONS WE ARE CONCERNED ABOUT.

RESTRICTIONS ON SHIPS' AGENTS.

AT EVERY VESSEL PORT OF CALL, THE OPERATOR APPOINTS AN AGENT TO REPRESENT THE COMPANY ON A WIDE VARIETY OF MATTERS. WHERE ALLOWED, THE AGENT IS OFTEN OWNED BY THE SHIPPING COMPANY. THE SHIPS' AGENT IS NOT ONLY A CRUCIAL LINK IN THE INTERMODAL CHAIN OF INTERNATIONAL TRANSPORTATION, BUT IS ALSO AN IMPORTANT SOURCE OF REVENUE FOR THE COMPANY AND CARGO FOR THE VESSEL. AN AGENT, BY DEFINITION, IS SUPPOSED TO REPRESENT THE INTERESTS OF THE PRINCIPAL. THIS, HOWEVER, IS NOT ALWAYS THE CASE. A NUMBER OF TRADE PARTNERS HAVE IMPOSED RESTRICTIONS ON SUCH AGENTS THAT INHIBIT THE EFFICIENT OPERATIONS OF OUR U.S.-FLAG CARRIERS. A NOTABLE EXAMPLE IS KOREA. THE KOREA MARITIME AND PORT ADMINISTRATION REQUIRES THAT ALL FOREIGN SHIPOWNERS APPOINT A 100 PERCENT KOREAN-OWNED AGENT, SO THAT ALL SALES,

MARKETING, CONTRACTING, WAREHOUSING, MAINTENANCE AND REPAIR MUST BE CARRIED OUT BY THAT AGENT. ANOTHER EXAMPLE IS TAIWAN, WHERE U.S. CARRIERS ARE PROHIBITED FROM PROVIDING AGENCY SERVICES, EXCEPT ON THEIR OWN BEHALF. BY CONTRAST, THE UNITED STATES GENERALLY DOES NOT IMPOSE ANY SUCH RESTRICTIONS ON FOREIGN-FLAG CARRIERS CALLING AT OUR PORTS, AND ALL CARRIERS ARE FREE TO USE THE SERVICES OF THE SHIPS' AGENT OF THEIR CHOICE.

TRUCKING SERVICES

TRUCKING SERVICE THAT IS USED TO PICK UP OR DROP OFF CONTAINERS IS ANOTHER CRUCIAL ELEMENT IN THE INTERMODAL TRANSPORTATION OF FOREIGN TRADE CARGO. KOREA AND TAIWAN PROHIBIT U.S.-FLAG OPERATORS FROM OWNING OR OPERATING SUCH TRUCKING SERVICES. FOR OCEAN CONTAINER OPERATIONS, LOCAL AND LONG DISTANCE TRUCKING CAN PROVIDE AN IMPORTANT LINK BETWEEN VESSEL OPERATIONS AND INLAND CUSTOMERS. TRUCKING SERVICE THAT CAN PICK UP AND DROP OFF CONTAINERS AT INLAND POINTS FOR REASONABLE COST NOT ONLY IMPROVES EFFICIENCY, BUT ALSO GIVES THE OCEAN CARRIER AN ADVANTAGE IN MARKETING HIS SERVICE TO SHIPPERS. BECAUSE BOTH KOREA AND TAIWAN PROHIBIT U.S. CARRIERS FROM CONDUCTING THEIR OWN TRUCKING OPERATIONS, THESE ADVANTAGES ARE NOT AVAILABLE TO U.S. LINER OPERATORS. BY CONTRAST, FOREIGN CARRIERS WHOSE CONTAINERS WE SEE ON THE

HIGHWAYS EVERY DAY HAVE NO RESTRICTIONS OR LIMITATIONS AND ARE FREE TO SET UP THEIR EXTENSIVE TRUCKING OPERATIONS TO SERVE THEIR ECONOMIC INTERESTS BEST.

CONTAINER TERMINAL OPERATIONS

SAFE AND EFFICIENT HANDLING OF CONTAINERS IS THE PRIMARY FUNCTION OF CONTAINER TERMINAL OPERATIONS. RAPID BERTHING AT SUCH TERMINALS IS AN OPERATIONAL NECESSITY. IN KOREA, U.S.-FLAG CARRIERS ARE PROHIBITED FROM OWNING OR OPERATING THEIR OWN TERMINAL FACILITIES AND ARE DENIED EQUAL ACCESS TO COMMON USER FACILITIES. U.S.-FLAG CARRIERS DO NOT NOW ENJOY THE SAME PREFERENTIAL BERTH ARRANGEMENTS ACCORDED KOREAN-FLAG CARRIERS AT THE BUSAN CONTAINER TERMINAL OPERATING COMPANY. IN TAIWAN, EXCEPT WHERE THERE IS TWO-THIRDS NATIONAL OWNERSHIP, U.S.-FLAG CARRIERS ARE PROHIBITED FROM OPERATING THEIR OWN TERMINALS. AGAIN THE UNITED STATES DOES NOT IN ANY WAY RESTRICT THE ACCESS TO CONTAINER TERMINALS IN THIS COUNTRY. WE ARE FREE AND OPEN TO ALL.

MR. CHAIRMAN, I HOPE THAT THESE THREE EXAMPLES WILL GIVE A GENERAL IDEA OF SOME OF THE PROBLEMS ENCOUNTERED BY U.S.-FLAG LINER OPERATORS COMPETING IN INTERNATIONAL TRADE. AS THE UNITED STATES DOES NOT IMPOSE SIMILAR RESTRICTIONS ON

FOREIGN-FLAG CARRIERS CALLING AT U.S. PORTS, THESE FOREIGN-FLAG CARRIERS HAVE A COMPETITIVE EDGE OVER SIMILARLY SITUATED U.S.-FLAG LINER OPERATORS.

MR. CHAIRMAN, I BELIEVE THAT BASIC FAIRNESS IS PART OF OUR HERITAGE AS AMERICANS. WE WANT AN HONEST DEAL - NO MORE, NO LESS. AS MARITIME ADMINISTRATOR, I WANT AND AM WORKING FOR AN HONEST DEAL FOR U.S.-FLAG LINERS OPERATING IN INTERNATIONAL TRADE.

TO THIS END, WE HAVE BEEN DOCUMENTING THESE RESTRICTIVE PRACTICES AND, IN CONJUNCTION WITH OTHER AGENCIES, HAVE PRESSED FOR THEIR REMOVAL. RESULTS HAVE NOT COME EASILY, BECAUSE VERY OFTEN THE OTHER COUNTRY SEEKS TO PROTECT NOT ONLY ITS SHIPPING INDUSTRY BUT VARIOUS BRANCHES OF LAND TRANSPORTATION AND CARGO FORWARDING. BUT PERSISTENCE PAYS OFF. THE OTHER SIDE HAS TO KNOW THAT WE WILL NOT GO AWAY UNTIL THE PROBLEMS ARE SOLVED.

AN EXAMPLE OF THIS IS THE CASE OF THE BAN ON THE LAND TRANSPORT OF HIGH CUBE CONTAINERS IN JAPAN WHICH HAS ENGAGED SEVERAL U.S. AGENCIES FOR A NUMBER OF YEARS. FROM THE STANDPOINT OF EFFICIENCY, THE ABILITY TO EMPLOY THESE HIGHER VOLUME BOXES WOULD BENEFIT NOT ONLY OUR CARRIERS, BUT ALSO JAPANESE AND THIRD-FLAG OPERATORS AND SHIPPERS AS WELL. YET IT HAS TAKEN ALMOST FOUR YEARS OF REPRESENTATIONS TO THE GOVERNMENT IN TOKYO TO GET US TO WHERE WE CAN SAY THAT WE

HAVE MADE SUBSTANTIAL PROGRESS. WHEN JIM BURNLEY AND I WERE IN TOKYO LAST NOVEMBER, OUR CARRIERS TOLD US THAT IT WAS NOW ECONOMICAL FOR THEM TO MOVE HIGH CUBE CONTAINERS ON MANY JAPANESE ROADS. WE ARE NOT FINISHED, HOWEVER, AND WE WILL CONTINUE TO MONITOR THE SITUATION TO ENSURE FURTHER PROGRESS.

IN PURSUING THESE ISSUES, MR. CHAIRMAN, WE RECOGNIZE THAT IF THE OTHER COUNTRY IS UNWILLING TO REMOVE BURDENS ON OUR CARRIERS, THEN WE HAVE TO CONSIDER OTHER ALTERNATIVES.

SUCH ACTION WOULD INCLUDE APPROPRIATE PROCEEDINGS BY THE FEDERAL MARITIME COMMISSION (COMMISSION) UNDER SECTION 19(1)(B) OF THE MERCHANT MARINE ACT, 1920, AND SECTION 13(B)(5) OF THE SHIPPING ACT OF 1984. AS YOU KNOW, SECTION 19(1)(B) GIVES THE COMMISSION AUTHORITY FOR EYE-FOR-AN-EYE RETALIATORY MEASURES TO CORRECT CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE, WHICH COULD INCLUDE MANY OF THE FOREIGN BARRIERS TO OUR CARRIERS' OPERATIONS. IT IS WORTH NOTING, MR. CHAIRMAN, THAT SECTION 19 ACTIONS CAN BE INSTITUTED IN RESPONSE TO A PRIVATE PARTY COMPLAINT, ON THE COMMISSION'S OWN MOTION, OR IN RESPONSE TO A REQUEST FROM ONE OR MORE AGENCIES OF THE EXECUTIVE BRANCH. SECTION 13(B)(5) OF THE SHIPPING ACT OF 1984 MAY ALSO PROVIDE APPROPRIATE LEGAL RECOURSE FOR CONDITIONS IN CROSS TRADES.

I UNDERSTAND THAT THE CHAIRMAN OF THE COMMISSION WILL TESTIFY THIS MORNING, AND I AM PLEASED TO DEFER TO HIS EXPERTISE IN THIS MATTER.

IN ADDITION, SECTION 301 OF THE TRADE ACT OF 1974, WHICH EMPOWERS THE PRESIDENT TO RETALIATE AGAINST FOREIGN ACTIONS WHICH BURDEN OR RESTRICT U.S. TRADE IN GOODS AND SERVICES, COULD BE APPLIED TO OUR CARRIERS' PROBLEMS. IN FACT, THE RESTRICTIONS WHICH CONFRONT OUR CARRIERS IN KOREA, TAIWAN, PAKISTAN AND JAPAN HAVE ALSO BEEN RAISED IN BILATERAL TRADE DISCUSSIONS.

WITHOUT PRECLUDING POSSIBLE USE OF THE ROD, HOWEVER, WE WANT TO MAKE THE BEST EFFORT THAT WE CAN THROUGH NEGOTIATION TO RESOLVE THE OUTSTANDING ISSUES. WE HOPE TO MEET THIS SPRING WITH TAIWAN AND KOREA, AND LATER WE INTEND TO SIT DOWN AGAIN WITH OUR COUNTERPARTS FROM JAPAN. IN ADDITION, I DO NOT RULE OUT FURTHER TRAVEL LATER THIS YEAR TO MAKE OUR MESSAGE CLEAR TO OTHER FOREIGN GOVERNMENTS.

MR. CHAIRMAN, YOU HAVE ALSO REQUESTED OUR VIEWS ON PROTECTIONISM IN WORLD SHIPBUILDING. WE NOW HAVE DOCUMENTED VARIOUS FORMS OF PROTECTION FOR THIS INDUSTRY IN 27 COUNTRIES. WITH THE CAVEAT THAT WE HAVE NOT COMPLETED THIS UNDERTAKING, AND WITH THE PERMISSION OF THE CHAIR, I WOULD LIKE TO SUBMIT FOR THE RECORD THE INFORMATION THAT WE HAVE DEVELOPED SO FAR. WHEN WE COMPLETE THIS REVIEW, I WILL BE

PLEASED TO PROVIDE YOUR COMMITTEE WITH AN UPDATED CATALOGUE OF INFORMATION.

MR. CHAIRMAN, ALTHOUGH WE HAVE NOT COMPLETED THIS REVIEW, IT IS CLEAR THAT PROTECTIONISM IN WORLD SHIPBUILDING IS WIDESPREAD. THERE IS NO QUESTION THAT IT DISTORTS THE FREE MARKET AND HELPS KEEP THE COST OF SOME FOREIGN-CONSTRUCTED VESSELS LOW. I WILL BE PLEASED TO KEEP THE SUBCOMMITTEE INFORMED AS INFORMATION ON THIS SUBJECT IS FURTHER DEVELOPED.

MR. CHAIRMAN, LAST WEEK I ALSO RECEIVED WORD THAT YOU WOULD LIKE OUR COMMENTS ON CHAIRMAN JONES' BILL, H.R. 1290, "AN ACT TO COUNTER UNFAIR OCEAN TRANSPORTATION PRACTICES, AND FOR OTHER PURPOSES." THIS BILL IS A COMPREHENSIVE AND HIGHLY INNOVATIVE ATTEMPT TO RESOLVE SOME OF THE PROBLEMS WE ARE ALL GRAPPLING WITH TODAY. HOWEVER, WHILE WE SUPPORT ITS OBJECTIVES -- THE ELIMINATION OF RESTRICTIVE PRACTICES IN INTERNATIONAL SHIPPING -- THE PRACTICAL RESULT WOULD BE THE IMPOSITION OF COMMERCIAL CARGO RESERVATION, WHICH THE ADMINISTRATION OPPOSES.

FOR EXAMPLE, AS WE READ THE BILL, IF DURING A TWELVE MONTH PERIOD, JAPANESE VESSELS TRANSPORT 15 PERCENT OR MORE OF TOYOTA AUTOS IMPORTED INTO THE UNITED STATES, AND THIS IS 10 PERCENT MORE THAN THE TOYOTA AUTOS TRANSPORTED BY U.S.-FLAG VESSELS IN THIS TRADE, THEN AN UNFAIR TRADE PRACTICE

WOULD BE DEEMED TO EXIST IN THE OCEAN TRANSPORTATION OF TOYOTA AUTOS FROM JAPAN TO THE UNITED STATES. THE GOVERNMENT OF JAPAN OR THE JAPANESE SHIP OWNER WOULD BE REQUIRED TO PROVE OTHERWISE, BUT IT IS NOT CLEAR HOW THIS STATUTORY ASSUMPTION COULD BE OVERCOME. NONETHELESS, WITHIN SIX MONTHS AFTER THE FEDERAL MARITIME COMMISSION FINDS THIS SITUATION TO BE AN UNFAIR TRADE PRACTICE, THE PRESCRIBED NEGOTIATION PROCEDURE MUST BE SUCCESSFULLY COMPLETED OR A CIVIL PENALTY WOULD APPLY. THIS PENALTY IS AN AMOUNT EQUAL TO THE OCEAN FREIGHT OF THE TOYOTAS. IT IS NOT CLEAR WHETHER THE AMOUNT IN QUESTION IS THE FREIGHT ONLY ON THE CARRIAGE IN EXCESS OF 15 PERCENT OR ON ALL CARS TRANSPORTED ON JAPANESE VESSELS. IN EITHER CASE, THIS WOULD CLEARLY BE UNACCEPTABLE TO THE JAPANESE. THEREFORE, THEY WOULD PROBABLY AGREE TO SPLIT TRANSPORTATION ON A 50 - 50 BASIS WITH U.S.-FLAG SHIPS, AS CALLED FOR IN THE NEGOTIATION PROCEDURE. THE PREMISE OF THE BILL IS A FUNDAMENTAL DEPARTURE FROM CURRENT LAW, GOVERNING EITHER TRADE IN GOODS OR MARITIME TRANSPORTATION SERVICES, NEITHER OF WHICH DEFINES UNFAIR TRADE PRACTICES IN TERMS OF NUMERICAL GOALS. THE EFFECT OF THIS WOULD BE AN EXPANSION OF CARGO RESERVATION INTO THE COMMERCIAL SECTOR WHICH IS OPPOSED BY THE ADMINISTRATION.

MR. CHAIRMAN, I AM CONFIDENT THAT THE CHAIRMAN OF THE FEDERAL MARITIME COMMISSION WILL BE COMMENTING ON THIS AND OTHER ASPECTS OF H.R. 1290 AT SOME LENGTH.

IN CONCLUSION, MR. CHAIRMAN, I WOULD LIKE TO ASSURE YOU AND THE MEMBERS OF THE SUBCOMMITTEE THAT THE DEPARTMENT WILL CONTINUE ITS BEST EFFORTS TO ENSURE THAT THE U.S. MARITIME INDUSTRY GETS AN HONEST DEAL IN INTERNATIONAL TRADE. THAT CONCLUDES MY PREPARED STATEMENT. I WILL BE PLEASED TO ANSWER ANY QUESTIONS THAT YOU OR THE MEMBERS OF THE SUBCOMMITTEE MAY HAVE.